



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 7500-99

18 May 2000

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments  
(2) Case Summary  
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former commissioned officer in the United States Marine Corps Reserve filed enclosure (1) with this Board requesting, in effect, that he be reinstated in the Marine Corps Reserve in order to qualify for reserve retirement.

2. The Board, consisting of Mr. Zarnesky, Ms. Gilbert and Ms. Hardbower, reviewed Petitioner's allegations of error and injustice on 16 May 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner was commissioned in the Marine Corps Reserve on 20 May 1979 after about two years of service as an enlisted reservist. On 30 April 1980 he augmented into the Regular Marine Corps. He then served continuously on active duty until he was discharged on 1 November 1991.

d. On 2 November 1991 Petitioner was commissioned in the Marine Corps Reserve. He was subsequently promoted to MAJ (O-4). However, during the next three years, he did not participate and did not earn qualifying years for retirement. During the period 18 February 1995 to 17 February 1999 he earned four consecutive qualifying years for retirement. He was honorably discharged on 31 May 1999.

e. Petitioner's discharge was required because he had twice failed of selection to LTCOL (O-5) and had completed 20 years of commissioned service. At the time of his discharge Petitioner was credited with 19 years of qualifying service for reserve retirement. Title 10 U.S.C. 12646 states that an officer such as Petitioner will be retained in an active status for two years or until he earns 20 qualifying years for retirement. However, Petitioner was not placed in this "safety zone" because he also did not meet the requirement that the last six years of qualifying service be in the Reserve component. As indicated, at the end of his anniversary year on 17 February 1999, only the last four years of qualifying service were in the reserve component. It was Marine Corps policy at the time to place in the safety zone only those officers who needed additional qualifying years, and not those who needed additional service in the reserve component. The Board has been informed that this policy changed sometime in 1999.

#### CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes that Petitioner has 19 years of qualifying service for retirement and four of the required six years of qualifying service in the reserve component. Since he could have met both requirements within two years, the Board concludes that placement in the safety zone is now appropriate.

The Board is aware that one of the two years allowed by the statute to earn retirement has passed. Therefore, in order to give Petitioner an opportunity to qualify for retirement, the record should be corrected by transferring 35 retirement points from the excess over 50 from subsequent anniversary years into the anniversary year ending 17 February 1995. With this change Petitioner will have 20 years of qualifying service and five of the required six qualifying years in the reserve component. The Record should be further corrected to show that he was not discharged on 31 May 1999, but placed in the safety zone on that date pursuant to 10 U.S.C. 12646. The Board is aware that the requirement that the last six years of qualifying service be in the reserve component is scheduled to revert to eight years on 1 October 2001. Therefore, to ensure retirement eligibility Petitioner will have to earn 35 retirement points in the anniversary year which will end on 17 February 2001.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand his status in the Marine Corps Reserve.

RECOMMENDATION:


- a. That Petitioner's naval record be corrected to show that he was not discharged on 31 May 1999 but was placed in the safety zone to complete 20 years of qualifying service.
- b. That Petitioner's record be further corrected by transferring 35 retirement points into the anniversary year ending 17 February 1995 from the excess over 50 points in the subsequent anniversary years.
- c. That this Report of Proceedings be filed in Petitioner's naval record.
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder



ALAN E. GOLDSMITH  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



for W. DEAN PFEIFFER  
Executive Director